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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE,

Plaintiff and Respondent,

v.

REINALDO AYALA,

Defendant and Appellant.

B211767

(Los Angeles County
Super. Ct. No. NA074225)

APPEAL from a judgment of the Superior Court of Los Angeles County,
Richard R. Romero, Judge. Affirmed.

Marilee Marshall & Associates and Marilee Marshall, under appointment by
the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant
Attorney General, Pamela C. Hamanaka, Assistant Attorney General, Susan D. Martynec
and Robert M. Snider, Deputy Attorneys General, for Plaintiff and Respondent.

Reinaldo Ayala appeals from a judgment entered following his no contest plea to count 1, discharging a firearm with gross negligence (Pen. Code, § 246.3, subd. (a)), count 2, possession of a firearm by a felon (Penal Code, §12021, subd. (a)(1)) and his admission that he suffered a prior conviction for negligently discharging a firearm, a serious or violent felony within the meaning of the “Three Strikes” law (Pen. Code, §§ 1170.12, subds. (a)-(d) and 667, subds. (b)-(i)) and served three prior prison terms within the meaning of Penal Code section 667.5. He was sentenced to prison for four years, consisting of in count 1, the midterm of two years, doubled by reason of his prior strike. Sentence on count 2 was stayed pursuant to Penal Code section 654. He contends the evidence was insufficient to establish that his prior conviction for negligent discharge of a firearm involved the personal use of a deadly weapon so as to qualify as a serious felony within the meaning of the Three Strikes law. For reasons stated in the opinion, we affirm the judgment.¹

FACTUAL AND PROCEDURAL SUMMARY

According to the evidence at the preliminary hearing, on May 2, 2007, Long Beach Police Officer Patrick Reddick responded to 5372 Long Beach Boulevard in Long Beach after receiving a call that shots had been fired. At that location, he saw appellant, who matched the description of the suspected shooter, leave Pisano’s bar. Officer Reddick and his partner exited their vehicle and his partner tried to contact appellant. Appellant ignored the officer’s orders and kept walking. Appellant then walked into a nail shop and dropped a black, semi-automatic weapon. Upon leaving the shop, appellant was arrested. A loaded .9 millimeter Walther firearm was recovered. Two loaded magazines were recovered from appellant’s person.

¹ The notice of appeal filed September 22, 2008, states it is an appeal from the decision dated August 4, 2008, wherein the court denied the “motion for correction of sentence/writ of mandamus.” Respondent filed in this court a motion to dismiss the appeal on the grounds that appellant was appealing from a nonappealable order, that the appeal was not timely in that the judgment was entered on July 5, 2007, and that appellant failed to obtain a certificate of probable cause. The motion to dismiss was denied by this court on July 6, 2009.

Witnesses in the area heard gunshots and heard appellant tell individuals that the police were after him. One individual saw appellant with a gun in his waistband and another saw appellant leave the bar and fire a gun in a nearby alley.

DISCUSSION

Appellant contends the evidence was insufficient to establish that his prior conviction for negligently discharging a firearm involved the personal use of a deadly weapon so as to qualify as a serious felony within the meaning of the Three Strikes law. He argues a violation of Penal Code section 246.3 can be used as a strike only if the defendant personally used the firearm (Pen. Code, § 1192.7, subd. (c)(8)) or personally used a dangerous or deadly weapon (Pen. Code, § 1192.7, subd. (c)(23)) and that it is possible to commit the crime without personal use, e.g., as an aider and abettor. (See *People v. Bautista* (2005) 125 Cal.App.4th 646, 654.)

Appellant argues his situation is similar to the facts in *People v. Golde* (2008) 163 Cal.App.4th 101 where the appellate court vacated the prior serious felony finding. In *Golde*, however, “defendant himself admitted only the ‘prior conviction.’ He did not admit the enhancement allegation. He did not admit the prior conviction was a serious felony. He did not admit he personally discharged the firearm at issue in the [prior] conviction.” (*Id.* at p. 113.)

In the present case, the information alleged that in case number NA030623 on December 17, 1996, appellant was convicted of violating Penal Code section 246.3,² and that he had a prior conviction of a serious or violent felony within the meaning of Penal Code sections 1170.12, subdivision (a) through (d) and 667, subdivision (b) through (i). At the time of appellant’s no contest plea and admission of the prior, the court also advised appellant, “[i]t’s also alleged, sir, you have a so-called strike, a prior conviction

² Penal Code section 246.3 provides in pertinent part, “(a) Except as otherwise authorized by law, any person who willfully discharges a firearm in a grossly negligent manner which could result in injury or death to a person is guilty of a public offense and shall be punished by imprisonment in a county jail not exceeding one year, or by imprisonment in the state prison.”

for a serious or violent felony in 1996. That's the conviction for Penal Code section 246.3. That's in case NA030623, alleged as a strike under the Three-Strike law, which is 1170.12 (a) through (d) and 667 (b) through (i) of the Penal Code."

Here, unlike in *Golde*, appellant admitted not only that he had a prior conviction in 1996, but that it was a serious felony and a strike within the meaning of the Three Strikes law. Appellant's admissions were sufficient. (See *People v. Thomas* (1986) 41 Cal.3d 837, 841-843.)

DISCUSSION

The judgment is affirmed.

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EPSTEIN, P.J.

We concur:

WILLHITE, J.

MANELLA, J.